

AFTER THE JUDGEMENT COMES WHAT?

BY

UNITY LABOUR PARTY

THE ISSUE

On February 12, 2025, the three-member Court of Appeal delivered, in favour of the government and people of SVG, the judgment in the COVID-vaccine case, overturning in the process a highly-flawed and underwhelming decision of the High Court. A relatively small number of frontline public sector workers lost, but the general public won. But after the judgment comes what?

The ancient Hebrew people, in their teaching and learning from Psalms, had long addressed the issue of judgement and the allied virtues of justice, mercy, truth, and righteousness. The Psalm [89, verses 14-16] instructs us thus: ‘Justice and judgment are the habitation of thy throne: mercy and truth shall go before thy face. Blessed is the people that know the joyful sound: they shall walk, O Lord, in the light of the countenance. In thy name shall they rejoice all the day: and in thy righteousness shall they be exalted.’

One authoritative commentator in analysing this portion of Psalm 89 advises as follows:

“Righteousness and justice, mercy and truth surround God on his throne; they are fundamental aspects of the way God rules. As God’s ambassadors, we should deal with people similarly. Make sure your actions flow out of justice, righteousness, mercy, and truth because any unfair, unloving, or dishonest action cannot come from God.”

The ULP government, from the beginning of the COVID-19 pandemic has always been guided by these precepts. And after the Court of Appeal judgment our Prime Minister’s comments are reflective of these virtues and values in his repeated call for the small group of frontline workers who had abandoned their jobs and have refused to return to work for over 40 months, to do so without loss of any pension benefits.

One of the Psalms of David, Psalm 101, similarly extols the cure for any distress: “I will sing of mercy and judgment; unto thee, O Lord, will I sing. I will behave myself wisely in a perfect way. -----I will set no wicked thing before mine eyes: I hate the work of them that turn aside; it shall not cleave to me.-----. He that worketh deceit shall not dwell within my house; he that telleth lies shall not tarry in my sight.”

The leadership of the public sector unions have expressed their intention to appeal the judgement of the Court of Appeal to the Judicial Committee of the Privy Council. The ULP government has no problem with that; it is their right to do so, if that is their chosen course of action. But it is very difficult to see how the incisive and illuminating judgment of Justices of Appeal Ventose and Webster can be overturned. It is an enormous legal mountain to be scaled by anyone.

By all means, the affected workers can return to work and still pursue their case further to the final appellate authority.

HOW MANY WORKERS ARE CURRENTLY AFFECTED?

Let us begin by clearing the decks with a factual declaration: Almost 100 percent of the customs officers, immigration officers, police, airport and port workers took the COVID-19 vaccine as required and did not abandon their jobs; slightly under 100 percent of the health workers also took the vaccine; and some 95 percent of the teachers did so. The “special measures” were instituted by the government for frontline public sector workers in October/November 2021 because the hospitalisations were climbing sharply, the death toll was rising hugely, and the compelling threat of the mutating virus necessitated other measures in addition to those that had been rolled out hitherto. The Court of Appeal decision affirmed the wisdom, proportionality, legality, and constitutionality of the government’s “special measures”.

It is to be noted that as of February 13, 2025, of the 246 frontline, established public sector workers who were deemed to have abandoned their positions, 116 have been reemployed at their request. Thus, 130 are still to indicate their desire to return to work; of this 130, the largest group, 82, were employed as teachers; the next numerically significant group are nurses/nursing assistants. These former employees ought to request a return to work.

It should be pointed out that at least two of the public servants who are active litigants in the vaccine case before the Courts did return to work in April/May 2023, albeit long after the declared end of the public health emergency. It should also be noted, too, that in keeping with the promise made by Comrade Ralph, several of the affected employees who returned to work and have since retired (including the granting of early retirement) are receiving their pension benefits on the basis of their pre-abandonment years of service added to their service after their return to work. The ULP government is on the side of justice and mercy, righteousness and truth.

THE TRUTH ABOUT THE GOVERNMENT'S RESPONSE TO COVID-19

The ULP government is the only CARICOM government that did not declare a State of Emergency under the Constitution and so deprived people of their fundamental rights and freedoms; it declared only a public health emergency to fight the pandemic in a measured manner, to manage the risks. Our government did not close our borders; it never locked down the county. It never issued “draconian Chinese methods” as urged upon it by the opposition NDP in Parliament in April 2020 in the very early days of the pandemic. It is only when the hospitalisations piled up and the deaths spiraled amidst dangerous mutations of the virus did the government proceed to introduce “special measures” for frontline public sector workers to protect the health, lives, and livelihoods of teachers and students; health workers and patients; immigration, customs, port, and airport employees and their clients; and police officers and the general public.

As the Chief Medical Officer (CMO) outlined in her affidavit evidence in the Law Court, and recounted by Justice of Appeal Ventose in his judgment, the government implemented a series of essential measures, including vaccination on a voluntary basis. But in the changed circumstances of the spread of the dangerous virus and its mutations, she made recommendations to the Minister of Health to introduce “Special Measures” to better prevent the spread of the virus, prevent severe illness, hospitalisation and, importantly to prevent death.” Justice of Appeal Ventose detailed all of these facts in paragraphs 80 to 85 of his written judgment!

From the very outset, the government had a focused, measured approach to address the health, economic, social, and security challenges of the COVID pandemic. We amended the Public Health Act appropriately as early as April 2020; amendments which the opposition NDP supported amidst their urgings for us to go even further and implement “draconian Chinese methods”, which we rejected. We issued appropriate, valid, reasonable, and constitutional subordinate legislation in the form of Statutory Rules and Orders, and other relevant legal instruments.

The framework, upon advisement by authoritative individuals, was outlined by Comrade Ralphs’ speech to the nation on March 25, 2020, and other addresses to the people in, and out of, Parliament. The Comrade published in 2021, before the issuance of the “Special Measures”, a document entitled The Atomised Individual, the Social Individual and the COVID Vaccine; it was republished in December 2021, by Strategic Forum Inc. He is the only leader, not only in CARICOM, but in the world, to put this matter into clear philosophical, legal, scientific, and practical perspectives. It is noteworthy that these perspectives have been vindicated by the Court of Appeal in its judgment of February 12, 2025.

OVERTURNING ESCO HENRY'S JUDGEMENT

The highly-flawed and underwhelming judgment of Justice Esco Henry at the High Court was overturned by the Court of Appeal. Justice Henry got it wrong on the facts and the law. It was a robust take down of a bad judgment of first instance. Justice Henry got her facts “plainly wrong” in her assertion that the Minister of Health did not make Rule 8 of the “Special Measures” on the advice of the Chief Medical Officer (CMO). She got it wrong in her factual and legal conclusion that Rule 8 was unlawful, unconstitutional, and void on that basis. She got it wrong in fact and law in her conclusion that the Minister of Health usurped the functions of the Public Service Commission (PSC). She got it wrong on the fact and law regarding the pension issue and thus the matter of the infringement of property rights (the pension). She got it wrong in her determination that the public servants’ fundamental constitutional rights were infringed in both fact and law on the issue of the “proportionality test” as applied to the “Special Measures” provisions. She got it wrong in her conclusion that the public servants’ right to natural justice was breached; there was no breach of natural justice and the actions of the government passed the “fairness” test. She got it wrong in concluding that the letters of the Commissioner of Police and the PSC violated the constitutional right of the public servants and police officers. She got it wrong in averring that the government in its actions breached the ‘separation of powers’ doctrine in the Constitution.

As judgments go, JA Ventose’s 75-page judgement was an incisive, brilliant, and cogent take down of Esco Henry’s ruling at the High Court. It, too, is a full and complete answer to the dissenting Court of Appeal judgment of JA Gerhard Wallbanks which is only a slightly more refined version of Henry’s highly-flawed judgment. Justice of Appeal Paul Webster’s concurring judgment for the majority of the Court of Appeal is lucid and compelling on all the relevant issues at hand.

JA Paul Webster’s conclusion is pellucid:

“My overall conclusion is that it is unfortunate that the actions of the employees resulted in their deemed resignations from their employment. However, the Government was faced with a drastic crisis of unprecedented proportions that was causing significant health issues and loss of life. Measures had to be taken to address the situation. In the circumstances that were prevailing during the pandemic the measures that were taken were not disproportionate, unconstitutional, ultra vires, or procedurally unfair. Those who chose to not comply, no matter how conscientious their objections, had to deal with the consequences of their non-compliance.”

Of course, some of “those who chose to not comply” acted nobly out of genuine convictions, even if mistaken. But others acted out of pure petty, partisan, anti-Ralph politics; some, too, used the issue to move their careers elsewhere while hoping to get a big pay out in back salaries for months not work, and in Justice Henry’s ludicrous award of “damages to be assessed”; and others were simply anti-vaxxers.

Still the government must act with mercy and justice, truth and righteousness in a quest of healing from the bruising encounter with an external enemy at our gates — the COVID pandemic.

HAPLESS OPPOSITION NDP

The hapless NDP with its trademarks opportunism and backwardness will never learn. Early in the pandemic when the people were panicking, they urged “draconian Chinese methods”, locking down the village of Greiggs, closing borders, locking down the country. Later, as the ULP government was calmly and effectively dealing with the matter, they joined a minority of anti-vaxxers in embracing what they referred to “sacred body autonomy” and thus opposed even the wearing of masks, testing for the virus, or the taking of the vaccine; they in their public statements undermined the voluntary vaccination campaign with their worshipping at a wholly individualistic altar in the midst of a public health emergency. And still later, the NDP supported the public sector unions, the unions’ lawyers, and Justice Henry’s highly-flawed and underwhelming jurisprudence.

The opposition NDP is calling for reinstatement of the public sector employees who abandoned their jobs and have failed/refused to return to work after the end of the public health emergency. Does this reinstatement involve, in the NDP’s proposal, payment of the 41 months so far during which the employees did not work? There are some 250 workers who abandoned their jobs, and some 130 have still not returned. Payment for back salaries will be way in excess of \$30 million; thus far. Is he NDP proposing for the hardworking people of SVG to pay this sum to these persons? And do they support the payment of Esco Henry’s “damages to be assessed” even in light of the Court of Appeal judgment?

The ULP government is bending over backwards to accommodate the employees’ return to work with any accrued pension benefits intact; but not back-pay salaries. Indeed, we have already accommodated the pension rights of persons who have returned to work. The NDP appears to favour hurting the poor and hardworking Vincentians to support those who chose to act not in accord with these very people’s interest.